IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4028 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJARAM @ RAJU SEVAKRAM SINDHI

Versus

STATE OF GUJARAT

Appearance:

MR CB DASTOOR for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/02/2000

ORAL JUDGEMENT

#. Heard Mr.C.B.Dastoor, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 24-5-99 passed by

respondent No. 2 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicate that 5 prohibition cases are registered against the petitioner at Nashabandhi (North) Police Station and Sardar Nagar Police Station on 22-3-99, 2-4-99, 3-4-99 and 7-4-99 respectively. That in each case, the country made liquor was seized from the possession of the petitioner / detenu. Furthermore, two witnesses on assurance of their anonymity have given their statement on 23-5-1999 against the anti social activities of the petitioner and have narrated the alleged incidents of dated 25-4-99 and 5-5-99 respectively. That on the basis of the said material, the respondent No. 2 - The Commissioner of Police, Ahmedabad as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order suffers infirmity of non application of mind inasmuch as though the petitioner was in judicial custody in respect to C.R. No : 162/99 registered at Nashabandhi (North) Police Station and was released on bail on different dates in 4 other criminal cases registered, the detaining authority has failed to consider the aspect of claiming cancellation of bail under Section 437(5) of CrPC which has vitiated the subjective satisfaction and as such, the impugned order is bad in law.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved

and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that the petitioner was released on bail in all four cases registered against him and was in judicial custody in respect to C.R. No : 162 of 1999. That the detaining authority has observed in the grounds of detention that the detenu was on bail in respect to cases registered at Sr.No : 2 to 5 and was in judicial custody in respect to offence registered at Sr.No : 1. However, on production, the detenu could have applied for bail at any time and in all probabilities, he would have been granted bail and having got released himself on bail, is likely to continue his anti social activities. The said observations suggests that the detaining authority has not considered the aspect of claiming cancellation of bail granted to the detenu in the registered case against him before passing the impugned order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 24-5-99 passed by respondent No. 2 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - RAJARAM @ RAJU SEVAKRAM SINDHI is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 7-2-2000 [A.K.Trivedi, J.]

#kailash#